IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL FROM ORDER NO.1005 OF 2004

Smt.Raziya Wahid Ali Khan .. Appellant.
V/s.
Sayyed Iqrar Hussain & 3 Ors. .. Respondents.

Mr.M.N. Havnur with Ms.Vidya Manjrekar for the Appellant.

Mr.A.G. Damle for the Respondent No.4.
Mr.Agnes Pereira for the Respondent No.1.
Ms. Joglekar for the Respondent Nos.2 and 3.

**CORAM : A.S. OKA, J.**

**DATED : 5TH APRIL, 2005.**

P.C. :

1. Admit. The learned Advocate for the Respondent No.1, the Advocate for the Respondent Nos.2 and 3 and the Advocate for Respondent No.4 waives service. Taken up for hearing forthwith.

2. Challenge in this Appeal from Order is to the judgment and order dated July 6, 2004 passed by the learned Trial Judge by which the Notice of Motion No.5071 of 2001 taken out by the Appellant- Original Defendant No.4 has been disposed of.

3. The prayers made in the said Notice of Motion read thus :

> "(a) That this Hon'ble be pleased to impound the forged (Original) documents as Ex.'J' and

‘L’ to the Plaint ;

(b) That this Hon’ble be pleased to modify the Order passed by this Hon’ble Court on 3.10.2001 by clarifying that the Order dated 3.10.2001 is not in respect of Room No.48 which is in occupation of Smt.Razia Wahid Ali Khan who is Plaintiff in Suit No.7523/2000 ;

(c) This Hon’ble Court be pleased to hold that the Suit premises in the above suit is R.No.53 and the Defendant No.1 are at liberty to pursue action U/s.351 of BMC Act in respect of Room No.53, as shown in Sketch in Notice at Ex.‘J’ to Plaint i.e. Notice No.D/Bldg/JE-5/351/350/B of 2000 of 25.5.2001 ;

4. The learned Trial Judge has held that in so far as prayer clause (a) is concerned, there is no question of impounding the documents at Exhibit ‘J’ and ‘L’ as the original documents are not on record. The learned Trial Judge has recorded that prayer clause (b) was not pressed.

5. I have heard Advocates appearing for the parties. In so far as prayer clause (a) is concerned as held by the Trial Court, the original documents are not produced before the Trial Court and hence order of impounding the original documents cannot be passed.

6. I had called upon the Advocate appearing for Respondent Nos.2 and 3 to produce original office copies of the documents at Exhibit ‘J’ and Exhibit ‘L’. Accordingly, original office copies of the said

documents are produced today for my perusal. Prima facie, the said documents show that the documents at Exhibit 'J' and Exhibit 'L' are in respect of Room No.53 and on the copies of the said documents annexed by the Respondent No.1 to the plaint the Room No.53 is changed to Room No.48.

7. As stated earlier order for impounding the documents cannot be passed for the reasons recorded by the learned Trial Judge. However, if the Original Plaintiff has produced the manipulated or fabricated documents in support of this case, the Appellant can always take out an appropriate proceedings in that behalf.

8. In so far as prayer clause (c) is concerned, it is to be noted here that the learned Advocate appearing for the Respondent Nos.2 and 3 stated that the document at Exhibit 'J' pertains to Room No.53. In view of this statement, it is not necessary to grant prayer clause (c).

9. Hence, I pass following order :

1. Appeal from Order is dismissed with no order as to costs.

2. However, it will be open for the Appellant to take appropriate proceedings in respect of documents at Exhibit ‘J’ and Exhibit ‘L’ annexed to the plaint filed by Respondent No.1 as observed in this judgment.

3. All contentions of the parties on merits of the suit are expressly kept open.

4. Parties to act on authenticated copy of this order.

(A.S. OKA, J.)